THE FOURTH DAY.

15th March, 1923.

The Assembly met at 11-35 A. M. on Thursday, the 15th March, 1923.

42. Some suggestions for the better administration of criminal and civil justice.

Mr. N. K. Paramesvaran Pillai (Member, Municipal Council, Trivandrum) observed that the Government had been steadily increasing the number of civil and criminal courts and raising the salaries of the presiding officers thereof. They had also been making useful remarks in regard to the work of those courts in their annual reviews of the activities of the Judicial Department. There were, however, a great many cases of denial of justice, and the proverbial delay of the law in criminal as well as civil courts had taken so violent a form in Travancore that the number of pending cases showed an increase which was not creditable to the good traditions of the judiciary. The salaries of the officers had been recently raised and additional judges, munsiffs and magistrates had been appointed, besides a third bench in the High Court which, though sanctioned only as a temporary measure, had almost become a permanent institution. The frequent shufflings in the grade of Police officers had tended to lessen individual interest and efficiency in the detection of crime and the increase given from time to time to the salary of those officers had made them look down upon the Magistrates whose pay was very much less than their own. The pay and position of Magistrates in relation to those of Police officers required a thorough revision. The persons appointed as Magistrates were often inefficient and indolent, promotion going by seniority and not by capacity for work. A clerk in the Secretariat or a Deputy Tahsildar could not be expected to be able to cope with magisterial duties. A clerk who passed the B. L. examination did not understand the law of procedure and the system of recruitment in that respect called for immediate change. The Member suggested that Magistrates should be recruited from among the practising vakils who had been actually handling criminal cases and that their appointment should be made through the High Court.

The Member next stated that the magistracy was greatly hampered by the inadequacy of its establishment. The number of clerks and copyists in a court should depend on the volume of the work it had to get through and no uniform standard of strength could be fixed. He then referred to the vagaries committed by the Police in the matter of securing confessions from undertrial prisoners in duress, and said that, in spite of the provisions of the Evidence Act, Magistrates recorded confessions in merely automatic manner without stopping to consider whether such confessions were voluntary or not. He suggested that, if undertrial prisoners were housed in sub-jails, independent of the control of the Police, a good deal of perjury, falsification of evidence, and the creation of false *thondies* would come to an end. As to the depositions of witnesses, some Magistrates recorded them in a most careless manner, with the result that such depositions were not intelligible either to the party or to the court. The reading of a deposition in court before the witness signed it was seldom insisted on. The Member pointed out that, as the time of the District Magistrates was wholly taken up by their revenue and treasury inspection work, they found it impossible to effectively supervise the administration of criminal justice. The High Court had neither the opportunity nor the inclination to interfere with or regulate the work of criminal courts, and the Dewan, as his name itself signified, looked more to the collection of revenue and other such matters.

The Member said that the condition of civil courts was even worse. The number of suits in the courts gradually tended to increase and the condition of a Munsiff's court was one of "more haste" and "less speed", in spite of the fact that courts had been sanctioned in new localities. The pay of the officers had been increased and

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the officers as a class were, it must be said, honest and hardworking. No Munsiff was able to examine more than 10 witnesses a day and the remaining 50 or 60 who put in their appearance wasted their valuable time in court. That fact had been brought to the notice of the High Court by vakils practising before it, but the old order had not changed. It was also well known that the examination of witnesses before courts had become unnecessarily lengthy, because the presiding officers never acquainted themselves with the facts of the case before the stage of argument was actually reached. It was highly necessary to prescribe time-limits within which issues should be framed and the cases heard and disposed of finally. The circular fixing the number of cases to be disposed of by a Munsiff or a Judge necessitated the disposal of both ripe and unripe cases so as to enable him to show the minimum number. It was in the disposal of execution cases that the expenditure, vexation and trouble caused by the delay of civil courts manifested themselves in their most acute form. A large number of cases were being hurried through in the short interval of half an hour, generally between 3·30 and 4 P. M., easily enough by the execution clerk, whose words carried sure conviction to the mind of the presiding officer. The Member suggested that such cases might be posted on two or three days every month and disposed of then and there. The Member next pointed out that, though the presiding officers were generally honest, their staff was invariably corrupt, with the result that nothing could be got done regularly and in time and the parties uniformly suffered. The inspection work done by the High Court was of a very unsatisfactory kind, while the presiding officers did not generally scrutinise the work of their staff. There should be surprise inspections every year. Though, no doubt, judicial independence should be maintained at all cost, the Member submitted that, in administrative matters, the Government had a right and a duty to scrutinise the work of the High Court as well. As regards the Village Panchayat Courts communal representation should be stopped, and young, energetic and educated men should be appointed as Judges. It would be well if those seats could be thrown open for election by the people.

Dewan's reply.—There is no administration which is without its shortcomings, and the judicial administration here also cannot be altogether free from its shortcomings. If you examine the judicial administration of other countries, there also you will find many such shortcomings. Law's delays are proverbial all over the world. I do not mean to say thereby that we should not improve the existing conditions here. It is the duty of the Government, as it is the duty of the Judicial Department, to improve the existing conditions, and minimise, and, if possible, remove every shortcoming. All that I can say is that it shall be the constant endeavour of Government to do so. Of course, it is a difficult task, as Mr. ramesvaran Pillai has pointed out. Any interference by the Government in judicial tters is likely to be resented, and it is very difficult to draw the line between what purely judicial and what is administrative on the judicial side. The High Court a responsible body and it supervises the work of judicial officers, both civil and minal and the Government trust that the High Court would exercise constant effective supervision and minimise these shortcomings as far as possible. As a tter of fact, the High Court has been recently engaged in the revision of Civil les of Practice and it believes that this revision will be conducive to the elimination of many shortcomings.

The suggestion that one of the Judges of the High Court should be present here to hear what the members say in regard to the administration of civil and criminal justice was considered by me. I had a discussion with the Chief Justice about it. The High Court thinks that there is no advantage to be gained by a single Judge hearing what is said here, because what the members say here is being sent over to the High Court and the High Court is being asked to make its remarks thereon. On the other hand, the High Court thinks that the presence of one of the Judges here without his having the power to reply and without his taking part in the discussion is a disadvantage and is productive of no good.

Mr. Paramesvaran Pillai.—The heads of all other departments are here. They are not expected to reply.

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Dewan.—The High Court object to a single Judge being present and answering for the full bench. We are thankful to you and the other gentlemen for informing the Government of all the shortcomings of judicial administration. But I should like to request you to give me specific instances of these shortcomings. I remember Mr. Narayanaru Krishnaru saying yesterday that he had a large number of instances to quote in support of his statements. Mr. Paramesvaran Pillai and Mr. Narayana Aiyar have also, I believe, instances in support of their statements. I want all these instances to be put on paper and handed over to me. I shall then forward them to the High Court and request it to make a departmental enquiry and say whether those statements are correct and if so what its suggestions are for remedying them.

Mr. Narayana Aiyar.—The High Court know some of these shortcomings. We have represented them to the Judges who come to our courts for inspection. These Judges do their inspection during vacation time. They stay in satroms and get their clerks to examine the records.

Dewan.—You mix up two things. Inspection is done no doubt during vacation. It is a defect that has to be remedied and it is for this purpose that the High Court Regulation is being amended. When the amending Bill is passed, we expect the High Court to send out one of its Judges for inspection during the time when the Courts are working. The other part of your statement, *viz.*, that the High Court Judge who goes out for the inspection of subordinate courts does not himself inspect these courts requires specific instances to support it. You are saying this against very responsible officers, and I cannot believe it unless you furnish me with proof to the contrary. A Judge must stay somewhere, it may be in a satrom or traveller's bungalow, and he may ask his clerk to make the detailed inspection. He may thereafter, do the check inspection himself. It is not necessary that he should be in the court premises from 6 A. M. to 6 P. M. That is not the way in which superior officers conduct inspection work.

None of you, gentlemen, have sent me your speeches in advance. I want your allegations to be sent to me in advance so that I may get detailed remarks from the High Court. The High Court now simply says that your representation is vague and that it has no remarks to offer. I do not see much advantage in asking a High Court Judge to be present. But your representation on the point will be sent to the High Court.

Mr. Paramesvaran Pillai.—The old order of things will continue if a High Court Judge does not attend.

Dewan.—I have no objection to write to the Chief Justice about it.

Mr. Paramesvaran Pillai.—I can boldly say that the instances mentioned by me are real.

Dewan.—Then, why do you not put them on paper?

Mr. Paramesvaran Pillai.— By all means, I shall do so.

Dewan.—Either give me instances in advance or place them on paper in support of the various statements you make. I shall send the written record to the High Court and ask it to investigate these instances.

Dewan.—Then you say that official stamp vendors should be appointed in place of private vendors on commission.

Mr. Narayana Aiyar.—That is profitable to Government.

Dewan.—Whether it is profitable or not, the merits of the system have to be considered. You also say that the Judges of Village Panchayat Courts are nominated by the Proverthicars. This cannot be true, at least of late, because I have issued special instructions to the Peishkars that they should personally satisfy themselves about the fitness of their nominees.

There is another point in your representation and that relates to banker's books and other records which are not registered documents. Government are undertaking egislation which would exempt banker's books from being produced before courts.

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In regard to the inadequacy of the staff, it is for the head of department to bring it to the notice of Government.

In regard to undertrial prisoners in Police custody, the existing arrangement is defective and it has already attracted my attention. I am considering what should be done. It is a matter involving a good deal of expenditure.

Then in regard to recruitment of Magistrates, I have already made certain changes. You think that recruitment from the bar would be a real improvement. I cannot see why the Munsiffs, 50 per cent. of whom are recruited from the bar, should, according to your own statement, be inefficient. You say that the Munsiffs are equally bad in the administration of justice.

Mr. Paramesvaran Pillai.—They do not commit flagrant mistakes.

Dewan.—Mistake is one variety and inefficiency is another variety of shortcoming. You do not say that a Munsiff's work is better than that of a Magistrate.

As regards the District Magistrates' supervision, I do grant that, on account of their multifarious duties, they have not sufficient time to do it properly. We are impressing upon them the importance of this duty.

Mr. Narayanaru Krishnaru.—I have submitted all the instances in writing, but I have not mentioned names and places.

Dewan.—You must mention the names of individuals and places Otherwise your information is of no value.

Mr. Narayanaru Krishnaru.—There is no opportunity for us to prove what we say.

Dewan.—We shall ask the High Court to give you an opportunity. In the event of a departmental enquiry you will have a chance of proving what you say.

Mr. Narayanaru Krishnaru.—In that case I shall give a detailed list with full particulars as regards the names of officers, places, etc.

43. The administration of criminal justice with special reference to the Tiruvalla taluk.

Mr. Narayana Kaimal Nilakanta Kaimal (Member, Tiruvalla Taluk), in speaking on the administration of criminal justice, made pointed reference to the hardship and inconvenience suffered by the parties who appeared before Magistrates on account of their delay in the admission of complaints, examination of witnesses and adjournment of cases. He said that the District Magistrate alone could, to some extent, check those evils, but that, at present, the movements of those officers were not known to the people. The Member suggested that the tour programme of the District Magistrates might be published in advance and that they might be directed to ascertain during their tours the views of the representatives of the people on the work of the local Magistrates. The Member then referred to the work of the Magistrates who, being anxious to be prompt in the disposal of cases under directions from the Government, did not devote sufficient time to look into the cases carefully and arrive at well-considered decisions.

As regards the Bench Magistrates, the Member remarked that they were not of much use, as they could not entertain private complaints. Such complaints had now to be laid before the stipendiary Magistrates in the first instance and then transferred to the Bench Magistrates under the orders of the District Magistrate to be obtained on the motion of the stipendiary Magistrate.

Referring to the administration of the Police Department, the Member dwelt upon the shortcomings of that department owing to the enlistment as constables of men without education and status and the promotion of those men later on as head constables and even Inspectors. He next referred to the inadequacy of the pay of the constables and head constables and suggested its improvement as a remedy against temptation to corruption. As regards enlistment, the Member thought that only men who had passed at least the Vernacular School Leaving examination should be enlisted as constables and those only who had passed the Vernacular Higher or the English School Leaving Certificate examination as head constables. The Member suggested that the superior officers of the department might be required to make,

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